

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2884 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

ISHWARLAL SHIVRAMDAS PATELfs

Versus

STATE OF GUJARAT

Appearance:

MR PM THAKKAR for Petitioner

MR HL JANI, APP for Respondent-State.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 03/03/2000

ORAL JUDGEMENT

By way of filing this petition under Section 482 of the Code of Criminal Procedure, the petitioner has prayed to quash and set aside the complaint being Criminal Case No. 1995/93, filed before the Chief Judicial Magistrate, Mehsana.

2. The brief facts of the case are as under :

A complaint came to be filed by the Clerk of the Court, District Court, Mehsana, against the petitioner and one Kantilal Narayandas under Section 191 and 193 of

the Indian Penal Code as directed by the M.A.C.Tribunal (Main), Mehsana. On receiving the said complaint, the learned Chief Judicial Magistrate, Mehsana, after verification passed an order under Section 202 of the Code of Criminal Procedure and started further inquiry into the matter. Against that order, the petitioner has filed this petition under Section 482 of the Code of Criminal Procedure.

3. It emerges from the complaint that on 28-1-99 the petitioner and others were travelling in a jeep which met with an accident and due to that the petitioner and others had suffered some injuries for which the petitioner had filed claim petition before the Motor Accident Claims Tribunal, Mehsana, and prayed for compensation of Rs.50,000/- and for that the petitioner was required to pay court fee stamp of Rs.1,250/- at the initial stage, but he filed the petition as an indigent person and along with the petition he has also annexed Schedule A and Schedule B and declared his movable and immovable properties. In the said Schedules it is mentioned by the petitioner the petitioner is having house cost of which is Rs.500/- and also having utensils and other household articles of Rs.100/- and specifically stated on oath that except that he has no other properties movable or immovable and he has no means to pay he required court fee stamp, and therefore, he may be permitted to file the claim petition as an indigent person. In support of his say, the petitioner also filed affidavit. Meanwhile, the M.A.C.Tribunal (Main), Mehsana, received one third party application wherein the third party has disclosed certain facts regarding the movable and immovable properties of the petitioner, and therefore, the M.A.C.Tribunal (Main), Mehsana started inquiry into the matter and after that the Motor Accident Claims Tribunal, (Main), Mehsana, vide its order dated 15-12-92 directed the Clerk of the Court, District Court, Mehsana to file a complaint against the petitioner and one Kantilal Narayandas Patel. Against that the petitioner filed Special Criminal Application No.1/93 for quashing the order of the learned M.A.C.Tribunal (Main), Mehsana, dated 15-12-92, but same was withdrawn by the petitioner as according to him it was pre-complaint stage as averred by him in para 7, page 5 of the petition.

4. It seems that the complaint has been filed by the C.O.C., District Court, Mehsana, which has been registered as Criminal Case No.1995 of 1993 and after verification, the learned Chief Judicial Magistrate, Mehsana, started inquiry into the matter under Section 202 of the Code of Criminal Procedure. At this stage

again the petitioner has approached this Court and prayed to quash the complaint filed against him by the C.O.C., District Court, Mehsana, pursuant to the order passed by the M.A.C.Tribunal, (Main), Mehsana, whereby the learned Chief Judicial Magistrate, Mehsana, proceeded further into the matter under Section 202 of the Code of Criminal Procedure mainly on following grounds.

- (a) The petitioner had never authorized any of the advocate to file the claim petition as an indigent person.
- (b) The day on which i.e. 6-6-91 form pauperism claim petition (petition as an indigent person) has been filed into the Court, on that day he was not in Mehsana city from 11-00 a.m. to 11-45 p.m.
- (c) That as soon as he came to know about the alleged mischief played by the advocate, he sent one application in the month of June, 1992, to M.A.C.Tribunal (Main), Mehsana, and showed his willingness to pay the required fee stamp of Rs.1,250/- and later on he withdrawn M.A.C. Petition in the month of June 1992.
- (d) That advocate Mr. Kantilal N. Patel had manipulated and made the petitioner scapegoat.

5. Heard learned counsel for the petitioner Mr.P.M.Thakkar and Mr. H.L.Jani, learned A.P.P. for the State. I have also gone through the complaint and order passed by the learned Chief Judicial Magistrate, Mehsana. On going through the same, prima facie, it is established that pursuant to the order passed by the learned M.A.C.Tribunal (Main), Mehsana, a complaint came to be filed by the Clerk of the Court, District Court, Mehsana, and pursuant to that complaint, after recording the verification, the learned Chief Judicial Magistrate, Mehsana, has started inquiry into the matter under Section 202 of the Code of Criminal Procedure.

6. While deciding the matter under Section 482 of the Code of Criminal Procedure, what is required to be taken into consideration is whether the complaint prima facie discloses the offence in question and if the complaint prima facie disclose the offence in question, the complaint cannot be quashed by exercising powers under Section 482 of the Code of Criminal Procedure. Here in this case after making an inquiry into the matter, learned M.A.C. Tribunal (Main), Mehsana, has directed the Clerk of the Court, District Court, Mehsana to file a complaint against the petitioner and others under Section 191, 193 and 114 of the Indian Penal Code,

for which the inquiry is in process and therefore, the question of quashing the complaint at this stage does not arise, more particularly earlier the petitioner had preferred Special Civil Application No.1 of 1993, which came to be withdrawn, and thereafter, no further change has taken place except filing of complaint in the Court of learned Chief Judicial Magistrate, Mehsana and after recording verification of the complainant, the Court has passed the order under Section 202 of the Code of Criminal Procedure and started inquiry into the matter. Therefore, at this stage, interference of this Court is not called for. Over and above, the points which have been contended and argued by the petitioner before this Court are his defence which will be available to him at the time of trial. So, when the complaint prima facie disclose the offence for which the learned Chief Judicial Magistrate, Mehsana is inquiring into the matter, quashing of complaint is out of question at this stage. Hence, the petition is required to be rejected.

7. For the foregoing reasons, the petition is rejected. Interim relief stands vacated. Rule discharged. The Court below is hereby directed to proceed further in the matter according to law as expeditiously as possible.

3-3-2000 (R.P.Dholakia, J.)

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